



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
September 5, 2013 09:15 AM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 277913**

**STATE OF OHIO EX REL
ATTORNEY GENERAL
MICHAEL DEWI
vs.
QUEENCITY SCRIPT CARE
LLC**

A 1305998

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY
DEMAND**

PAGES FILED: 7

3. Defendant Thomas Fenske is the registered agent for Defendant QCSC LLC.
4. Defendant Thomas Fenske resides at [REDACTED]
5. Defendant Theresa Fenske resides at [REDACTED]
6. The actions of Defendants, hereinafter described, have occurred in Hamilton County in the State of Ohio and as set forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01, *et seq.*
7. Defendants are “suppliers,” as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting “consumer transactions” by accepting money from consumers for help with obtaining prescription drugs, within the meaning of R.C. 1345.01(A).
8. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
9. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) and (6).

STATEMENTS OF FACTS

10. Defendants are doing business in Ohio as Queen City Script Care.
11. On information and belief, Defendants Thomas and Theresa Fenske controlled and directed the business activities and sales conduct of Defendant QCSC LLC, causing, personally participating in, or ratifying the acts and practices of QCSC LLC as described in the Complaint.
12. Defendant Thomas Fenske is the founder of Queen City Script Care.
13. Both Thomas Fenske and Theresa Fenske have opened bank accounts for Queen City Script Care.
14. In the opening of the bank accounts, both Thomas Fenske and Theresa Fenske have represented that they are the owners of Queen City Script Care.

15. Both Thomas Fenske and Theresa Fenske signed documents stating they were owners of Queen City Script Care.
16. Many pharmaceutical companies offer Patient Assistance Programs that help eligible individuals obtain prescription medications for no charge or at a significantly discounted price.
17. Generally, in order to receive free or reduced price prescriptions from a Patient Assistance Program, an individual must submit an enrollment form, a prescription, and a proof of income.
18. There are many groups and websites that help individuals apply for Patient Assistance Programs for no charge.
19. NeedyMeds (needymeds.org) is a non-profit organization that offers Patient Assistance Program applications and information at no charge.
20. The Partnership for Prescription Assistance (pparx.org), sponsored by America's biopharmaceutical research companies, provides resources for individuals interested in Patient Assistance Programs for no charge.
21. There is no charge to apply to a Patient Assistance Program.
22. Defendants charged consumers \$30-\$41 a month to apply to these free Patient Assistance Programs.
23. After receiving payment from consumers, Defendants would collect prescription and income information from consumers, many who were elderly, and then apply to the Patient Assistance Programs on their behalf.

24. Defendants offered a guarantee that they would refund consumers monthly membership fee if a consumer did not receive medication and were determined to be ineligible for the Patient Assistance Program(s).
25. Many consumers, including elderly individuals with physical or mental infirmities, relied upon the Defendants' claim that they would receive free prescriptions or get their money back.
26. Many consumers who paid their monthly membership fee to Defendants never received any medication through a Patient Assistance Program and never received a full refund.
27. Defendants regularly and routinely made unauthorized debits from consumer bank accounts, by debiting bank accounts multiple times in one month and/or by continuing to debit the accounts even after consumers canceled their contract with Defendants.
28. Some consumers were forced to close their bank accounts because Defendants repeatedly debited their accounts without authorization.

COUNT I - FAILURE TO DELIVER

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
30. Defendants committed unfair or deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods or services and then permitting eight weeks to elapse without making shipment or delivery of the goods or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

COUNT II – UNFAIR AND DECEPTIVE ACTS AND PRACTICES

31. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
32. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) by repeatedly debiting consumers' bank accounts without authorization from the consumers.
33. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(10), by falsely representing that a consumer transaction involved a warranty.
34. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

COUNT III – UNCONSCIONABLE ACTS AND PRACTICES

35. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
36. Defendants committed unconscionable acts and practices in violation of the CSPA, R.C. 1345.03 by
 - a. Knowingly taking advantage of the inability of a consumer to protect his/her interest because of the consumer's physical or mental infirmities;
 - b. Knowingly charging a price substantially in excess of the price in which similar property or services were readily obtained in similar consumer transactions by like consumers.

37. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(B)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE that each act or practice complained of herein violates the CSPA in the manner set forth in the complaint.
- B. ISSUE a Permanent Injunction enjoining the Defendants, their agents, servants, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*
- C. ORDER Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions.
- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the CSPA, described herein pursuant to R.C. 1345.07(D).
- E. GRANT Plaintiff its costs incurred in bringing this action.
- F. ORDER Defendants to pay all court costs associated with this matter.
- G. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE

Attorney General

/s/ Eric M. Gooding
ERIC M. GOODING (0086555)
Assistant Attorney General
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202
Phone: (513) 852-1527
Fax: (877) 381-1751
Eric.Gooding@ohioattorneygeneral.gov
Counsel for Plaintiff, State of Ohio